

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JUAN ALCAZAR,
Plaintiff,
v.
FASHION NOVA, INC.,
Defendant.

Case No. 20-cv-01434-JST

**ORDER DENYING MOTION FOR
RECONSIDERATION**

Re: ECF No. 132

Before the Court is Defendant Fashion Nova, Inc.’s motion for reconsideration. ECF No. 132. Defendant asks the Court to reconsider its July 6, 2023 order denying Defendant’s motion to amend the scheduling order. ECF No. 100. Specifically, Defendant requests leave to file a rebuttal expert report and to depose Plaintiff Juan Alcazar. ECF No. 132 at 2. The Court will deny the motion.

The Court has discretion to reconsider its interlocutory orders at any point before it enters a final judgment. Fed. R. Civ. P. 54(b); *Amarel v. Connell*, 102 F.3d 1494, 1515 (9th Cir. 1996). Reconsideration is generally appropriate only if “the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.” *Kona Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (internal quotation marks and citation omitted).

Under the Local Rules of this District, a party moving for reconsideration must show reasonable diligence and base its motion on one of three enumerated grounds. *See* Civil L.R. 7-9(b)(1)–(3). Relevant here, Civil Local Rule 7-9(b)(1) provides that a motion for reconsideration may raise a “material difference in fact or law” about which the party learned after entry of the interlocutory order despite exercising reasonable diligence.

1 In addition, Rule 16 of the Federal Rules of Civil Procedure gives the Court discretion to
 2 modify the discovery schedule for “good cause.” Fed. R. Civ. P. 16(b)(4). When considering
 3 whether there is good cause, “the primary focus should be on whether the party seeking to reopen
 4 discovery has acted diligently.” *De Paz v. Wells Fargo Bank, N.A.*, 2020 WL 2404897, at *2
 5 (C.D. Cal. Feb. 18, 2020) (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th
 6 Cir. 1992)). A party who has not acted diligently may nonetheless demonstrate “good cause”
 7 under Rule 16(b)(4) if its former counsel’s actions amounted to “gross negligence or
 8 abandonment.” *Matrix Motor Co., Inc. v. Toyota Jidosha Kabushiki Kaisha*, 218 F.R.D. 667, 674
 9 (C.D. Cal. 2003).

10 Defendant asserts that a material factual difference warrants reconsideration here because
 11 Defendant discovered after the Court’s denial of the July 6 motion that its prior counsel had been
 12 negligent in pursuing discovery. ECF No. 132 at 5; *see* Civil L.R. 7-9(b)(1). Defendant points out
 13 that prior counsel did not retain experts until the due date for rebuttal reports, did not timely
 14 disclose those experts, and never deposed Plaintiff despite having noticed his deposition in
 15 November 2021. ECF No. 132 at 2–3, 6–9. Although the Court previously found that Defendant
 16 had not shown diligence or good cause warranting modification of the scheduling order, ECF
 17 No. 100 at 3, Defendant asks the Court to attribute that lack of diligence to prior counsel’s
 18 negligence, ECF No. 132 at 6.

19 “[A] client is ordinarily chargeable with his counsel’s negligent acts”; only in “unusual”
 20 cases of “extreme negligence or egregious conduct” will courts decline to attribute attorneys’
 21 conduct to the client. *Cnty. Dental Servs. v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002); *see also*
 22 *S.E.C. v. Platforms Wireless Int’l Corp.*, 617 F.3d 1072, 1101 (9th Cir. 2010) (stating that clients
 23 cannot “avoid the consequences of the acts or omissions of former counsel”) (citation omitted).
 24 “Because the client is presumed to have voluntarily chosen the lawyer as his representative and
 25 agent, he ordinarily cannot later avoid accountability for negligent acts or omissions of his
 26 counsel.” *Tani*, 282 F.3d at 1168 (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 633–34 (1962)).

27 Defendant argues that its prior counsel misrepresented the likelihood that Plaintiff would
 28 agree to an extension of the deadline for expert rebuttal reports, ECF No. 132 at 5, and that the

1 failure to depose Plaintiff was an “oversight” committed “for no strategic reason,” *id.* at 9.

2 Although there is some evidence that prior counsel failed to diligently pursue discovery,
3 these circumstances fall short of “extreme negligence or egregious conduct” warranting
4 reconsideration of the Court’s order. *Tani*, 282 F.3d at 1168. Nor does prior counsel’s conduct
5 amount to “gross negligence or abandonment” justifying departure from the general rule that
6 attorneys’ actions are attributed to their clients. *Matrix Motor Co., Inc.*, 218 F.R.D. at 674; *see*
7 *Durben v. State Farm Gen. Ins. Co.*, 2020 WL 803852, at *2 (E.D. Cal. Feb. 18, 2020) (finding no
8 gross negligence where counsel participated in the action and noting that “dissatisfaction with [the
9 attorney]’s handling of the case is insufficient” to demonstrate good cause).

10 Accordingly, the Court will not revisit its determination that Defendant has not shown
11 good cause for an amendment of the scheduling order. The motion for reconsideration is
12 DENIED.

13 **IT IS SO ORDERED.**

14 Dated: October 31, 2023

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16 JON S. TIGAR
17 United States District Judge
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